

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to driver’s licenses, REAL ID documentation and driver’s knowledge tests and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 601, “Application for License,” and Chapter 604, “License Examination,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.182.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and sections 321.177, 321.182 and 321.186; H.R. 133, Division U, Title X, REAL ID Modernization Act; and 6 CFR Sections 37.11 and 37.13.

Purpose and Summary

This proposed rule making updates the driver’s license application and examination process within Chapters 601 and 604 and aligns with existing legal authority and Department practice.

The proposed amendments incorporate existing legal authority from Iowa Code section 321.177 into the driver’s license application process relating to the Department’s responsibility to ensure a driver’s license holder is physically and mentally capable of operating a motor vehicle safely.

The proposed amendments to subrule 601.5(2), regarding the verification of Social Security numbers, align this subrule with amendments made to the federal REAL ID Act of 2005 by the REAL ID Modernization Act (H.R. 133, Division U, Title X), which was signed into law on December 27, 2020. These changes to the federal law eased the burden on persons seeking to provide proof of their Social Security number for the purpose of obtaining a REAL ID. Prior to the federal law changes and this proposed amendment, a person could provide proof of the person’s Social Security number only from a small prescribed list of documents. However, now the federal law allows a person to simply provide the person’s Social Security number, which the Department is still required to verify through the Social Security Online Verification (SSOLV) system.

The proposed amendments to subrule 601.5(5), relating to proof of a legal name change, remove barriers that certain customers have experienced when attempting to provide proof of a legal name change. The first change is to no longer require a court-ordered name change to contain the applicant’s date of birth. This is because a person’s date of birth is not always included in the court order, especially if that order is a divorce decree, and therefore this omission should not be a barrier to accepting a court order as a legal name change document. The second change is to ease the proof of legal name change process for existing Iowa licensees or cardholders whose name on their credential already matches their current legal name. This change incorporates guidance received from the U.S. Department of Homeland Security clarifying that an existing Iowa licensee or cardholder may prove a legal name change via confirmation from the SSOLV system pursuant to 6 CFR Section 37.13.

This proposed rule making adds new subrule 601.5(8), which adopts the REAL ID exceptions process from federal regulation 6 CFR Section 37.11(h). This process deals with situations in which an applicant for a REAL ID driver’s license or nonoperator’s identification card is unable, because of reasons beyond the applicant’s control, to provide a necessary proof of identity and date of birth or proof of legal name change document in order to be issued a REAL ID-compliant credential. The federal REAL ID regulations provide that the Department must require an applicant to prove the applicant’s identity, date of birth, proof of name change and lawful status in the United States. The applicant can

accomplish this by providing certain acceptable documents found in 6 CFR Section 37.11, and Iowa law mirrors the federal regulations. By adopting this new subrule, the Department will be able to provide a more streamlined exceptions process for applicants seeking a REAL ID credential, including allowing the Department to accept an I-94 document that was issued and verified by the U.S. Department of Homeland Security as proof of identity and date of birth for a refugee or asylee. Having a streamlined process will be especially important as the mandatory May 3, 2023, REAL ID compliance deadline approaches for persons wishing to board a commercial aircraft or enter a federal building.

The proposed amendments also update Chapter 604, the license examination rules, to align with current Department practice of allowing the noncommercial driver's license knowledge and driving test results to be valid for 180 days rather than 90 days. The proposed amendments also clarify the waiting periods for repeating a knowledge test and a driving test.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 12, 2021. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear oral presentations will be held on October 14, 2021, via conference call at 11 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 12, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 601.1(4) as follows:

601.1(4) Disabilities. The applicant shall indicate and explain any mental or physical disabilities which might affect the applicant's ability to operate a motor vehicle safely. The department may make further inquiries of the applicant or require further information necessary to determine whether it is safe to grant the applicant a driving privilege, including but not limited to requesting an examination authorized under Iowa Code section 321.186.

ITEM 2. Amend rule ~~761—601.1(321)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.13, 321.177, 321.182, 321.186, 321.196 and 321C.1;₂ Article V, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note);₂ and 6 CFR Part 37.

ITEM 3. Amend rule ~~761—601.5(321)~~ as follows:

761—601.5(321) Proofs submitted with application. A person who applies for a new Iowa driver's license or nonoperator's identification card, including a person who currently holds a license or card issued by another state or foreign jurisdiction, shall submit proof of identity, date of birth, social security number, Iowa residency and current residential address, and lawful status in the United States.

601.5(1) No change.

601.5(2) Verification of social security number.

a. Except as provided in paragraph 601.5(2) "*b.*" an applicant must present proof of the applicant's Social Security Administration's account number card; or if a social security account number card is not available, the applicant may present any of the following documents bearing the applicant's social security number:

~~(1) A W-2 form.~~

~~(2) A Social Security Administration 1099 form.~~

~~(3) A non-Social Security Administration 1099 form.~~

~~(4) A pay stub with the applicant's name and social security number on it.~~

~~(5) An Internal Revenue Service Form 1095-A, 1095-B or 1095-C.~~

b. An applicant who establishes identity by presenting the identity document listed in paragraph 601.5(1) "*f.*" (unexpired foreign passport with a valid, unexpired U.S. visa affixed and accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States) must ~~document~~ present proof of the applicant's social security number as set forth in paragraph 601.5(2) "*a.*" or demonstrate non-work authorized status.

601.5(3) and 601.5(4) No change.

601.5(5) Verification of name change. The name listed on the driver's license or nonoperator's identification card that is issued shall be identical to the name listed on the identity document submitted unless the applicant submits the chain of legal documents necessary to show the legal change of the applicant's name from the identity document submitted to the applicant's current legal name. under paragraph 601.5(5) "*a.*" or "*b.*" Alternatively, an applicant who is an existing Iowa licensee or cardholder may confirm the applicant's current legal name as displayed on the applicant's license or card under the requirements of paragraph 601.5(5) "*c.*" The following documents are acceptable:

a. Court-ordered name change. A court order must contain the applicant's prior legal name, the applicant's court-ordered legal name, ~~the applicant's date of birth,~~ and the court's certification of authenticity. Acceptable court orders include orders under petition for name change, orders for name change set forth in a decree of dissolution, and orders for name change set forth in a decree of adoption.

b. No change.

c. Social security records match. The applicant must establish that the applicant's Social Security Administration's account number is issued in the applicant's current legal name as verified by the department with the Social Security Online Verification (SSOLV) system in accordance with 6 CFR Section 37.13(b)(2).

601.5(6) No change.

601.5(7) *Verification of change of sex designation.* The sex designation listed on the driver's license or nonoperator's identification card that is issued shall be identical to the sex designation listed on the identity document submitted unless the applicant does one of the following:

a. and b. No change.

c. *Documentation.* Documentation provided under this subrule shall be submitted to ~~Driver and Identification Services~~ the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa, 50306-9204.

d. No change.

601.5(8) *Exception process.* As provided in 6 CFR Section 37.11(h) (REAL ID exceptions process), and notwithstanding any other provisions of this chapter or 761—Chapter 11 to the contrary, an applicant who, for reasons beyond the applicant's control, is unable to present a necessary document under this rule may apply to the department for an exception as provided in this subrule.

a. To apply for an exception under this rule, an applicant shall do all of the following:

(1) Submit an application to the department in a manner prescribed by the department. The application shall contain all of the following:

1. The applicant's name, address, date of birth and contact information.

2. Whether the applicant is applying for a driver's license or nonoperator's identification card.

3. A description of the necessary verification of identity and date of birth or verification of name change documents under this rule that the applicant is unable to provide and the reason why it is beyond the applicant's control to provide the document.

4. Any alternate document or other proof that exists to verify the facts contained in the missing document, which may include an approved I-94 form documenting the applicant's most recent admittance into the United States as verified by the U.S. Department of Homeland Security in accordance with 6 CFR Section 37.13.

5. Any other information or proof required by the department.

b. The motor vehicle division director or the director's designee may grant an exception under this rule if all of the following apply:

(1) The applicant has submitted an application with all of the required documentation under paragraph "a."

(2) The applicant, as determined by the department, has sufficiently demonstrated that the applicant is unable to provide a necessary document under this rule due to reasons beyond the applicant's control.

(3) The application of the subject rule will pose an undue hardship on the applicant, as determined by the department.

(4) Granting the exception will not prejudice the substantial legal rights of any person, as determined by the department.

c. The department may place any condition on an exception issued under this rule that the department finds necessary to carry out the department's functions under the REAL ID Act of 2005 as amended by the REAL ID Modernization Act, H.R. 133, Division U, Title X.

d. An exception under this subrule shall not apply to a required document under subrule 601.5(2).

e. An alternate document accepted under this exception process to satisfy the requirements of subrule 601.5(4) is only allowed if the document demonstrates United States citizenship as required by 6 CFR Section 37.11(h).

f. An applicant's inability to pay for a necessary document under this rule does not meet the criteria for an exception under this subrule.

g. Nothing in this subrule shall require the department to issue a driver's license or nonoperator's identification card if the applicant is not otherwise eligible for a license or card. The department reserves

the right to modify or cancel an exception at any time if the department finds that anything in the exception application or accompanying documentation was based on fraud or misrepresentation by the applicant, or if the modification or cancellation is necessary based on a change in circumstances of the applicant.

h. The application and documentation provided under this subrule shall be submitted to the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, or through electronic means determined by the department. The director of the motor vehicle division or the director's designee may, in response to an application submitted under this subrule, grant or deny an application for exception in accordance with this subrule.

i. An applicant whose application for exception under this rule has been denied may contest the decision in accordance with Iowa Code chapter 17A and 761—Chapter 13. The request for a hearing shall be submitted in writing to the motor vehicle division. The request shall include, as applicable, the applicant's name, driver's license or nonoperator's identification number, date of birth, complete address and telephone number. The request must be submitted within 20 days after the date of the notice of exception denial.

This rule is intended to implement Iowa Code chapter 17A and sections 321.13, 321.182 and 321.189; the REAL ID Act of 2005 (49 U.S.C. Section 30301 note); as amended by the REAL ID Modernization Act, H.R. 133, Division U, Title X; and 6 CFR Part 37.

ITEM 4. Amend rule 761—604.20(321) as follows:

761—604.20(321) Knowledge test.

604.20(1) to 604.20(3) No change.

604.20(4) *Test score.* The test score result is valid for 180 days.

604.20(4) 604.20(5) *Retesting.* An applicant who fails a knowledge test may repeat the test at the discretion of the examiner, ~~but at least one business day shall elapse between tests.~~

This rule is intended to implement Iowa Code section 321.186.

ITEM 5. Amend subrule 604.30(3) as follows:

604.30(3) *Test score.* The examiner shall use the standard departmental score sheet and shall enter the test score and the licensing decision in the spaces provided. At the end of the test, the examiner shall explain the test score. The test score result is valid for ~~90~~ 180 days.

ITEM 6. Amend subrule 604.30(4) as follows:

604.30(4) *Retesting.* ~~If an~~ An applicant who fails a driving test, may repeat the test ~~may be rescheduled~~ at the discretion of the examiner.